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Attorney for Plaintiff
KARTHIK SUBRAMANI

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

KARTHIK SUBRAMANI,

Plaintiff,

vs.

WELLS FARGO BANK, N.A.; FIDELITY
NATIONAL TITLE COMPANY; and DOES
1 through 100, inclusive,

Defendants.

Case No. 13-cv-01605-SC

**PLAINTIFF'S OPPOSITION TO WELLS
FARGO BANK, N.A.'S NOTICE OF
MOTION AND MOTION TO COMPEL
AMENDED RESPONSES TO FIRST SET
OF REQUESTS FOR ADMISSION;
REQUEST FOR MONETARY
SANCTIONS**

Date: December 12, 2014
Time: 10 a.m.
Ct. Room: 1, 17th Floor

Action Filed: April 9, 2013
Trial Date: February 23, 2015

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiff, Karthik Subramani, by and through his attorneys, hereby opposes Wells Fargo's Notice of Motion and Motion to Compel Amended Answers to First Set of Requests for Admission and Request for Sanctions. This opposition is based on the following Memorandum of Points and Authorities and exhibits attached thereto.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL AND PROCEDURAL BACKGROUND

Defense counsel propounded discovery to the Plaintiff which consisted of Requests for

1 Admission (Set One), Interrogatories (Set One) and Requests for Production of Documents (Set
2 One). Plaintiff provided complete answers to all of the discovery requests on November 10, 2014.
3 Plaintiff also provided the report of its expert on November 25, 2014- 90 days in advance of trial
4 as required by FRCP 26(a)(2).

5 On November 13, 2014, Wells Fargo propounded Interrogatories (Set Two) to the Plaintiff.
6 Plaintiff's Responses to Requests for Admission Set One and Wells Fargo's Interrogatories are
7 attached hereto as **Exhibits "A"** and **"B"**, respectively.

8 On November 18, 2014, Plaintiff served discovery on Wells Fargo consisting of Requests
9 for Admission, Interrogatories and Requests for Production of Documents. Wells Fargo refuses to
10 provide any responses to Plaintiff's discovery on the ground of improper service.

11 On November 24, 2014, Wells Fargo filed its Motion to Compel Amended Responses to
12 First Set of Requests for Admission and Request for Monetary Sanctions together with its Request
13 for an Order Shortening Time to Hear Motion to Compel. Plaintiff did not oppose the Motion for
14 an Order Shortening Time.

15 In its Motion to Compel Amended Responses to First Set of Request for Admission
16 ("RFA"), Wells Fargo objects to the form of responses to RFA Nos. 5, 8 and 9. Motion to Compel
17 ("MTC") at 3, 4. Plaintiff's response to each of these admissions requests is: "Plaintiff is without
18 sufficient knowledge or information to form a belief as to the truth of the RFA and, on that basis,
19 denies the RFA". Defendant objects to this response on the ground that Plaintiff was required to
20 state that he has made reasonable inquiry and that the information he knows or can readily obtain
21 is insufficient to enable him to admit or deny. MTC at 3.

22 In order to elicit further responses to RFA Set One, on November 13, 2014, Wells Fargo
23 propounded Interrogatories. Interrogatories Set Two relates to Plaintiff's denial of RFA Set One
24 Nos. 3, 5, 8 and 9. Specifically Interrogatories Set Two requests Plaintiff to state all facts
25 supporting his denial of the admissions requests. *See* Exhibit "B" hereto.

26 Plaintiff's responses to Interrogatories Set Two are due on December 16, 2014. Plaintiff's
27 responses to Interrogatories Set Two will cure the deficiencies in the form of the denial to RFA
28

Nos. 3, 8 and 9. Therefore, Wells Fargo's Motion to Compel is premature.

II. LEGAL STANDARDS

Federal Rule of Civil Procedure 36 governs Requests for Admission. FRCP 36(a)(6) sets forth the rules regarding a Motion Regarding the Sufficiency of an Answer or Objection and reads as follows:

The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. the court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.

The standards enunciated in FRCP 36(a)(6) apply to the motion under consideration.

III. ARGUMENT

Plaintiff concedes that Wells Fargo's objection to his responses to RFA Nos. 5, 8 and 9 are well taken. His responses should have included the statement that he made reasonable inquiry and that the information known to him or readily obtainable is insufficient to enable him to admit or deny the RFA. *See* FRCP 36(a)(4). However, in "meet and confer" discussions with Plaintiff's counsel, Defendants' objections to responses to discovery were global and not limited to responses to RFA 5, 8 and 9. Moreover, Wells Fargo's specific objections to Plaintiff's responses to RFA 5, 8 and 9 did not focus on the form of the response but the fact that Plaintiff denied each of these requests for admission. In other words, Wells Fargo did not get the responses it wanted.

Plaintiff's responses to Interrogatories Set Two are due on December 16, 2014. His responses will cure the deficiencies as to form. Wells Fargo's Motion to Dismiss is clearly unnecessary.

IV. MONETARY SANCTIONS ARE NOT WARRANTED

Defendants filed the instant motion before waiting for Plaintiff's responses to Interrogatories Set Two. Therefore, the motion is unnecessary. Monetary sanctions are, thus,

1 unwarranted under FRCP 37(a)(5)(A)(i). In addition, Plaintiff provided substantive responses to
2 each and every RFA Set One. Therefore, Plaintiff's responses to RFA 5, 8 and 9 are substantially
3 justified. FRCP 37(a)(5)(A)(ii).

4 For the foregoing reasons, Plaintiff respectfully requests that the Court deny Wells Fargo's
5 Request for Sanctions.

6 Respectfully submitted,
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8 DATED: December 9, 2014

LAW OFFICES OF MARK W. LAPHAM

9 By: /s/ Mark W. Lapham
10 Mark W. Lapham
11 Attorney for Plaintiff Karthik Subramani
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PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 751 Diablo Road, Danville, CA 94526.

On December 9, 2014, I served true copies of the following document(s):

- **PLAINTIFF'S OPPOSITION TO WELLS FARGO BANK, N.A.'S NOTICE OF MOTION AND MOTION TO COMPEL AMENDED RESPONSES TO FIRST SET OF REQUESTS FOR ADMISSION; REQUEST FOR MONETARY SANCTIONS**

On the interested parties in this action as follows:

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XXX BY CM/ECF NOTICE OF ELECTRONIC FILING: I caused said document(s) to be served by means of this Court's Notice of Electronic Filing, to the parties and/or counsel who registered CM/ECF Users are set forth in the service list obtained from this Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on December 9, 2014, at San Francisco, California.

/s/ Mark W. Lapham

Mark W. Lapham